

ENTERED

March 19, 2019

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ENVIRONMENTAL PACKAGING
TECHNOLOGIES, LTD., *et al.*,
Plaintiffs,

v.

ARCH INSURANCE COMPANY, *et al.*,
Defendants.

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CIVIL ACTION NO. 4:18-CV-00240

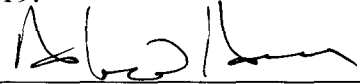
ORDER

The Court has before it the Memorandum and Recommendation of the United States Magistrate Judge (Doc. No. 35). The Court has considered that order, the Defendants' Objections thereto (Doc. No. 36), and reviewed the matter *de novo* and hereby adopts the Memorandum and Recommendation with the following clarification.

This Court has particularly reviewed "Count Three: *Stowers* Claims Against Arch" (Doc. No. 1 pp. 49-50). See *G.A. Stowers Furniture Company v. American Indemnity Co.*, 15 S.W.2d 244 (Tex. Comm'n App. 1929, holding approved). Defendants are correct that it is unclear what capacity Plaintiffs are attempting to use to assert such claims. In fact, their use of the plural implies the attempt to make a claim using multiple capacities. Therefore, in order to clarify the Memorandum and Recommendation and this Court's adoption of same, to the extent that Plaintiff Trevor Griffiths seeks to assert a *Stowers* claim in his individual capacity, as opposed to one that he acceded to by virtue of his judgment in state court, that attempt to assert an individual claim is hereby dismissed. To the extent Defendants claim that Plaintiffs cannot assert a *Stowers* claim in some other capacity, the Court will entertain that issue if a properly filed motion raising that issue is made pursuant to Rule 56 Fed. R. Civ. Pro.

The Defendants' Motion to Dismiss (Doc. No. 16) is hereby denied in part and granted in part. Plaintiff Trevor Griffiths' individual *Stowers* claim is hereby dismissed; the remaining portions of the Motion to Dismiss are denied.

SIGNED at Houston, Texas this 19th day of March, 2019.

A handwritten signature in black ink, appearing to read 'A. Hanen', is written over a horizontal line.

Andrew S. Hanen
United States District Judge